DOCUMENT RESUME

ED 297 325 CS 211 383

AUTHOR Miranda, Patricia
TITLE Compulsory Licensing of Journalists: Protection or Restraint? A Discussion on the Inter-American Court of Human Rights' Advisory Opinion on the Costa Rica Case.
PUB DATE May 87
NOTE 35p.; Paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication (71st, Portland, OR, July 2-5, 1988).
PUB TYPE Information Analyses (070) -- Speeches/Conference Papers (150) -- Reports - Evaluative/Feasibility (142)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Certification; Civil Liberties; Constitutional Law; *Court Litigation; Diffusion (Communication); Discriminatory Legislation; Freedom of Information; *Freedom of Speech; *International Law; *Journalism; *Latin Americans; Legal Problems; Mass Media Effects; News Media; Professional Autonomy
IDENTIFIERS Costa Rica; First Amendment; Inter American Court of Human Rights; *Journalism Licensing; Legal Rights; *Press Law

ABSTRACT

In 1985 the Inter-American Court of Human Rights ruled that a Costa Rican statute requiring journalists to be licensed violates the American Convention on Human Rights and, by extension, all human rights conventions. Though press freedom advocates hailed it as a major triumph for freedom of expression, the court's ruling was only advisory and has not stopped Costa Rica or other Latin American countries from maintaining such licensing laws. Debate over the licensing of journalists continues, however. The Inter-American Press Association has called upon the legislatures of signatory countries of the Inter-American Convention of Human Rights to repeal their licensing laws in light of the Inter-American Court's decision. While opponents do not dispute the fact that the "colegios" (professional associations which journalists are required to join) can promote the betterment of the journalism profession, they do object to the compulsory nature of the membership. Despite the stated motive of protection of journalists and of the public, such laws constitute a prior restraint, preventing journalists from exercising their right to freedom of expression and limiting the right of the public to receive information and ideas. (Five endnotes and 49 references are attached.) (MHC)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED297325

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Patricia Sobral De Miranda

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

- This document has been reproduced as received from the person or organization originating it.
- Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

COMPULSORY LICENSING OF JOURNALISTS: PROTECTION OR RESTRAINT?

A discussion on the Inter-American Court of Human Rights' advisory opinion on the Costa Rica case

by
Patricia Miranda

School of Journalism
Southern Illinois University
Carbondale, IL
May, 1987

CS-21 383

A system of control of the right of expression on behalf of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, in short, violates the right to information that this same society has. (Inter-American Court of Human Rights, Nov. 13, 1985)

Introduction

For hundreds of years, men have challenged the authority of the state to impose controls over the press.

When John Milton printed, as early as 1644, the "Areopagitica"--a pamphlet protesting a number of licensing acts passed in Great Britain--, he planted the seed for a struggle for free speech. Milton's classic defense of freedom of speech was at the root of the nearly three-and-a-half centuries of legal history of the question of prior restraint.

Milton's cry for freedom traveled fifty one years until it found a fertile ground: in 1695 the House of Commons refused to continue the Licensing Act, thus terminating the licensing system in England and letting the government with no formal hold over the press.

In the United States, this seed for press freedom flourished in 1735, when John Peter Zenger, a New York printer, challenged the government's power to prevent the truth to be published for political reasons. Zenger's case, through Andrew Hamilton's landmark defense, established truth as a defense in a libel trial.

In 1769, Sir William Blackstone, an English jurist, brought new light into the discussion of prior restraint, influencing the minds of the American Framers: his definition of liberty of the press as freedom from censorship previous to publication served as the foundation in which both the American and the English press laws built their guarantees.

Such efforts have resulted in the recognition of the principle of freedom of expression by the American Common Law, by the U.S. Constitution through its First Amendment, and by international charters such as

the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the European Convention on Human Rights, and the American Convention on Human Rights.

In a broad way and particularly in what refers to the provisions of the right to freedom of thought and expression, these basic documents on human rights bear general resemblance to each other.

The First Amendment of the U.S. Constitutions states that "Congress shall make no law...abridging the freedom of speech, or of the press..." (Marks, Schmidt and Pelesh, 1985, p. 7).

According to Article 19 of the Universal Declaration of Human Rights, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers" (Brownlie, 1981, p. 25).

Article IV of the American Declaration of the Rights and Duties of Man provides that "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever" (Brownlie, op. cit., p. 382).

The European Convention on Human Rights states, in its Article 10, that "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers" (Brownlie, op. cit., p. 246).

And finally, according to Article 13 of the American Convention on Human Rights, adopted on July 18, 1978 and adhered by 21 countries in the hemisphere (1), "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart

information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice" (Organization of American States, 1983, p. 36).

On November 13, 1985, in a case brought in Costa Rica, the Inter-American Court of Human Rights--a judicial body of the Organization of the American States--decided that compulsory licensing of journalists violates the American Convention on Human Rights and, by extension, all human rights conventions.

Even though the controversial issue of licensing has been discussed in several forums for several years, it was the first time that such issue had been brought to an international court and the first time obligatory licensing of journalists has been successfully challenged in a court case.

The press of the hemisphere and newsmen who advocate the right of journalists to express themselves, to seek and impart information have hailed the ruling as a "major triumph for freedom of expression" (IAPA News, Feb. 86, p. 1).

For its implications on press-licensing countries around the world, the unanimous opinion of the Inter-American Court of Human Rights has been described as a landmark decision "in the eternal quest for press freedom"--a decision that should go into the annals of history (Marks, et al, 1985. p. 14).

> In recognizing and upholding the tradition of freedom and a free press, the decision by the Western Hemisphere's highest human rights tribunal joins John Milton's "Areopagitica" (1644) and the John Peter Zenger case in the American colonies (1735) as a beacon to unfettered expression (Marks, 1986, p. VI).

Despite the enthusiasm of the press freedom advocates, the actual effect of the court's decision remains yet to be seen. There are still

governments and institutions interested in keeping the existing licensing systems. There are even fairly recent proposals suggesting the creation of such a system as a way to protect journalists.

The purpose of this paper is to report on the consequences of the Inter-American Court of Human Rights' decision and to present an analysis of the controversial issues that have been raised by supporters and adversaries of licensing laws to protect journalism and journalists.

Before analyzing the law case and its repercussions, however, it seems necessary to understand the law system of the country where the suit was filed: Costa Rica.

Costa Rica: constitutional freedom vs. compulsory Colegio

Costa Rica, as most Latin American countries, inherited its cultural and legal system from Spain and from the Napoleonic code, rather than the Anglo-Saxon common laws (Karst, 1966). Therefore, the press is regulated by constitutional provisions concerning freedom of the press and special press laws.

In the early 1830s, shortly after its independence from Spain (1821), Costa Rica stipulated that "Liberty of thought and expression is so absolute that no prior censorship, no regulation, no special or common tribunal shall restrict it. Neither the very overthrow of the constitutional order, armed rebellion nor civil war shall be a motive to repress it" (McColm, p. 24).

According to Article 20 of the Costa Rican Constitution of 1949, "All may communicate their thoughts verbally or in writing and publish them without previous censorship, but they will be responsible for any abuses they commit in the exercise of this right in such cases and in

such manners as the law may prescribe" (Fonseca, 1977, p. 31). Article 30 guarantees "Free access to administrative departments for the purpose of procuring information on subjects of public information," except for State secrets.

A nation of long democratic tradition, Costa Rica even "recognized the fundamental role the free flow of ideas and information plays in preserving a democratic system when, through Decree No. 14,803-G, dated 13 September 1983, ...established 'Freedom of Expression Day'" (McColm, 1986, p. 29).

In an act that confirmed its democratic concerns, Costa Rica, as a Member State of the Organization of the American States--an international organization created by the American republics to achieve an order of peace and justice, and to defend their sovereignty and independence--, was the first country to sign and ratify the American Convention of Human Rights, known as the Pact of San Jose. In doing so, it accepted the commitment to observe any jurisdiction of the Convention's means of protection--the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

In addition, Article 7 of the Costa Rican Magna Carta makes international law self-executing and assigns it to a higher authority than all prior and subsequent domestic legislation.

While, on one hand, such provisions guarantee the maintenance of Costa Rica's democratic tradition, on the other hand, other legal provisions, inherited from Spanish press legislatures dating from the 19th century which were reinforced during the Franco era, threaten this very tradition.

As Pike explained,

> Lured by their vision of the U.S., Spanish Americans have frequently adopted democratic procedures. Then, terrified by the likely social consequences, they have acted in accordance with their Spanish aristocratic, elitist, 'selectocratic' norms and aborted the democratic procedures (1971, p. 8).

Under Article 313 of the Criminal Code and Law No. 4420 of Costa Rica, journalists are required to be members of the Colegio de Periodistas (Association of Journalists) and to carry a license to pursue the profession (2). Approved in September of 1969, the Organic Law on the Colegio de Periodistas, as Law No. 4420 is known, created the Colegio as a way to stimulate a more professional press, or, as Jose J. Trejos, President of the country at that time explained, "for the good of Journalism in Costa Rica".

Colegiacion is part of a movement to "professionalize" journalism that has gathered strength through the world and specially in Latin America. It is a professional organization legally recognized and authorized to set educational, professional, ethical and moral standards for the profession (Gardner, 1985, p. 76).

A Colegio, according to Gardner, sometimes seems very tempting to journalists for it

> holds the promise of raising their educational level, their prestige and their standard of living; of giving them support in their fight for freedom of the press; and of providing an organization which might shield them from repression (p. 80).

The Costa Rican government-sanctioned press association limits membership to those journalists who had practiced the profession during five years preceding the promulgation of the law; to graduates of the University of Costa Rica's journalism school; and verified graduates of approved foreign schools of journalism. Foreign graduates are also required to have completed five years of residence in Costa Rica before

they can apply for membership (Fonseca, p. 33; Editor & Publisher, Jan. 15, 1983, p. 7).

> The member must fulfil the condition that his principal, regular and paid occupation is the exercise of his profession on a daily of periodical publication, a medium for broadcast or televised news or a news agency and that he obtains the principal resources for his subsistence from this occupation" (Fonseca, loc. cit.).

Such restrictions seem to be grounded in economic and nationalistic reasons. Being a small country where most of its media is concentrated in the capital, Costa Rica is also, as Gardner said, "a relatively small market for journalists" (1985, p. 86) in which large entries of new professionals can be regarded as a threat to the stability of the market. Therefore, strictness in selecting new journalists seems to be the solution to prevent overpopulation: the more selective the process of entry in the career is, the less threat will exist for the established professionals. (It is important not to forget that in Costa Rica, as well as in most Latin American countries, journalists have to face a situation of low wages and high inflation, which force them to hold multiple jobs in order to survive.)

In addition, one should take in consideration the role of the Colegio as a government-sanctioned institution and its function as a supporter of national development: among other things, the association is aimed to stimulate popular culture, to "contribute to the development of the democratic republican regime, defend national sovereignty and the institutions of the nation and make known its views on public problems" (Fonseca, 1977, p. 62-3). Such orientation seems to determine in ultimate instance a xenophobic policy in which foreign journalists apparently would not suit as well as the Costa Ricans the role that the Colegio has set for its professionals.

More recently, the Colegio expanded its regulatory powers to any person--foreign or Costa Rican citizen--who is "attending press conference, covering public spectacles, participating in interviews or reporting on accidents, ceremonies or other activities of 'public interest' or any other journalistic activity whatsoever" (McColm, p. 28).

It has also stressed its vigilant task of investigating the journalists who are exercising "full journalistic activities" without the Colegio's approval. Since 1984, its Board of Directors established a permanent commission to perform this investigation (Tico Times, 17 Feb. 1984).

In addition, as McColm's reported,

> Declaring itself "the only entity charged by the government and by law to watch over the practice of journalism by Costa Rica," the Colegio enlarged its mandate to license not only journalists but also five new other categories of media personnel. Among these are public relations agents, graphics reporters, journalist students, foreign correspondents and communicologists... (p. 27).

According to Colegio's former president Carlos Morales, the corporation's primary task is to "protect society from the harm that unlicensed journalists can do", reserving the practice for those who meet the standards established by the association (McColm, pp. 14 and 32).

Licensing on the spot: the Schmidt case

In 1979, during a roundtable debate on government licensing of journalists featured at the Inter-American Press Association meeting of directors, Stephen B. Schmidt, then reporter for local papers, challenged the Colegio.

Schmidt is a New Yorker who moved to Costa Rica in 1971 to work as a reporter on the English-language Tico Times, and as a contributor to

the Spanish-language La Nacion.

He told the panelists that, as a student journalist, he had an authorization of the Colegio and that he had been working as writer for the Tico Times. Even though he had graduated from the Autonomous University of Central America with a Masters degree in 1978, he had not been admitted to the Colegio yet. His question to the panelists was concerned with the plans of the Colegio to handle cases such as his.

"The penalty is two years in prison," answered Carlos Morales, as reported in Editor & Publisher (p. 7).

Such incident caused Schmidt to be charged by the Colegio with a law suit for "illegal practice of the profession." As attorney Ricardo Harbottle, representing the Colegio in the civil suit, defended, professional associations, such as the Colegios, must battle the illegal practice of the professions they are created to safeguard. The case was pending for six years, a period in which it was presented before five different legal organs.

Schmidt's case was first thrown out by a lower court for "lack of merit." The Colegio appealed and the case went before the Second Penal Court of San Jose on January 1983.

Judge Jeanette Sanchez, acknowledging the superiority of the American Convention on Human Rights over domestic laws, absolved Schmidt of all guilt and responsibilities, for he was exercising the basic human right of expressing oneself fully. According to Gardner, this was the first time the Pact of San Jose had been used as a basis for a court decision in the hemisphere (1985, p. 88). Even though Schmidt's activity technically violated the Colegio statute, according to a higher law it was not "antijuridical," Judge Sanchez concluded.

The argument of the Colegio was that Schmidt had openly violated its Organic Law, confessed publicly to doing so, possessed a degree from an unqualified university, and had neither applied to, not sued to be admitted to the Colegio (The Tico Times, Jan. 21, 1983, pp. 1,8).

Attorney Fernando Guier, on the other side, based his defense on the argument that (1) Schmidt did not depend on journalism for his livelihood even though he did write for some local papers--he earned his living as a commodities analyst; (2) he was misled into believing he could join the Colegion after he graduated from the UACA (Schmidt insisted he had enrolled at UACA at Colegio's suggestion); (3) there was no question about his qualifications as a journalist; (4) he was specialized in interpretative journalism, which is not defined as reporting under the Colegio's law; and (5) he was exercising a basic human right (The Tico Times, Jan. 14, 1983).

While the attorneys for the Colegio argued on the ground of the violation of the Organic Law, Judge Sanchez elevated the case to a higher dimension by making a distinction between the profession of journalists and other professions regulated by colegios.

> There is no doubt that in journalistic activity there exists an essential difference from the other professions. It is the only one among them in which the practice and discipline directly affects a basic right of human beings: freedom of opinion and expression... (McColm, p. 16).

By making such a distinction, Judge Sanchez pointed out that, consequently, the Colegio de Periodistas and other professional colegios cannot have the same legal nature.

In her verdict, Judge Sanchez concluded that, considering the definition of the profession adopted by the Colegio law, Schmidt was not a journalist. His primary living was earned as a commodities analyst.

Schmidt, according to the personnel manager of La Nacion, Alvaro Mora, and the Tico Times accountant, Saul Arias, did not earn a salary as a reporter at either newspaper. For the Tico Times he worked as a technical consultant (3), translator and style editor. For both papers he wrote occasional articles on national and international topics.

Five months after the unprecedented decision, the Costa Rican Supreme Court overruled the Second Penal Court in June 1983, annulling the acquittal and sentencing Schmidt to a three-month suspended jail term under the condition that he not repeat the crime. Even though the sentence was suspended, Schmidt entered into the Judicial Criminal Register--the Supreme Court's verdict caused him to have a criminal record in the country for the rest of his life.

For Carlos Morales, then president of the Colegio, this reversal "formally recognizes the obligations for obligatory licensing of journalists, which carries with it a recognition of journalism as a profession of university level and of limited access" (The Tico Times, June 10, 1983, p. 11).

For McColm, however, the Supreme Court's decision was based on a "perceived threat that upholding the decision would determine the various laws of the different professional colleges, since membership in each of these corporations would not be indispensable" (McColm, 1986, p. 16).

Sure of the political rationale behind the Supreme Court's ruling, Schmidt's attorneys filed a complaint with the Inter-American Commission of Human Rights in September 1983, charging he had been condemned unlawfully. According to the Costa Rican laws, the Supreme Court ruling cannot be appealed in the country. Since Costa Rica is a member state

of the Organization of the American States, the attorneys decided then to appeal to the Inter-American Commission, whose function is to "promote the observance and protection of the human rights and serve as a consultative organ of the OAE on these matters" (Inter-American Commission of Human Rights, 1983, p. 11).

Confirming the Court's decision, the Commission ruled 5 to 1 that there was no conflict between the Article 13 of the American Convention and the Organic Law of Colegio de Periodistas (the lone dissenting vote was cast by R. Bruce McColm, the representative from the U.S.).

The Commission's argument was that

> Membership in a professional association or the requirement of a card for the exercise of the profession of journalists does not imply restriction of the freedom of thought and expression, but rather a regulation that the Executive Branch may make on the validation of academic degrees, as well as the inspection of their exercise as an imperative of social order and guarantee of a better protection of human rights (World Press Freedom Committee, 1986, p. 23).

As explained by Marks, Schmidt, Jr., and Pelesh, the Commission relied for its decision upon the legitimate functions of the Colegio, such as the one of promulgating ethical standards and standards of performance. In their opinion, however, the Commission proceeded from a false premise since the issue of the case was not related with these functions, but with the one that restricts the practice of journalism: licensing (1985, p. 10).

According to them, "while the association may advocate or seek to persuade its members to follow high standards, it may not interfere with or discipline their journalistic activities" (pp. 11-12).

Following the Commission's decision, the immediate past president of the Inter-American Press Association persuaded the then president of Costa Rica Luis Alberto Monge to request, on behalf of his country, an

advisory opinion from the Inter-American Court of Human Rights. (It seems that it is an usual approach of IAPA to utilize personal contacts with diplomatic sources whenever possible as a tool of pressure (Gardner, 1967).)

On July 8, 1985, the Government of Costa Rica, despite the fact it had won the case twice, submitted its request to the Inter-American Court of Human Rights, a judicial body of OAS installed since 1979 in San Jose, Costa Rica.

The communication received by the Court read as follows:

> Is the compulsory membership of journalists and reporters in an association prescribed by law for the practice of journalism permitted or included among the restrictions or limitations authorized by Articles 13 and 29 of the American Convention on Human Rights? Is there any incompatibility, conflict or disagreement between those domestic norms and the aforementioned articles of the American Convention? (World Press Freedom Committee, 1986, p. 5)

The restrictions and limitations authorized by Article 13 of the American Convention mentioned by in the request stipulates that the right to freedom of expression shall not be subject to prior restraint but shall be subject to imposition of reliability in the case of disrespect for the rights or reputations of others or threat of national security, public order, or public health or moral

Article 29 establishes in a general way that no provision of the Convention shall be interpreted as permitting the preclusion of rights or guarantees that are inherent in the human personality or derived from representative democracy, or as excluding or limiting the effect of the American Declaration of the Rights and Duties of the Man (OAS, 1983, p. 42).

During the public hearings, the Court listened to the arguments for and against compulsory licensing. Briefs from the following

non-governmental organizations were submitted to the Court: the Inter-American Press Association, the Colegio de Periodistas of Costa Rica, the World Press Freedom Committee, the International Press Institute, the Newspaper Guild and the International Association of Broadcasting, the American Newspaper Publishers Association, the American Society of Newspaper Editors and the Association Press, the Federacion Latinoamericana de Periodistas, the International League for Human Rights, the Lawyers Committee for Human Rights, the American Watch Committee, and the Committee to Protect Journalists. It is not surprising that several American associations jumped on the case: after all, coming from a common law background, they hold a very distinct view on the law system and its powers.

The Colegio pointed out that compulsory licensing exists in the organic laws of all professional colegios, and that it assures adequate education, requires strict observance of the standards of professional ethics, oversees the correct exercise of the profession. The Costa Rican government argued that

> The practice of certain professions involves not only rights but also duties toward the community and the social order. That is what justifies the requirement of special qualifications, regulated by law, for the practice of some professions, such as journalism (World Press Freedom Committee, 1986, p. 24).

Compulsory licensing was defended by the Costa Rican government, the Colegio and the Inter-American Commission as a practice that has a social function--it respects the rights of the others and protects the public order, health, morals and national security while it guarantees ethics, competence, social betterment of journalists and independence from their employers (WPFC, loc. cit.).

The Court, however, did not agree with the arguments that justified

non-governmental organizations were submitted to the Court: the Inter-American Press Association, the Colegio de Periodistas of Costa Rica, the World Press Freedom Committee, the International Press Institute, the Newspaper Guild and the International Association of Broadcasting, the American Newspaper Publishers Association, the American Society of Newspaper Editors and the Association Press, the Federacion Latinoamericana de Periodistas, the International League for Human Rights, the Lawyers Committee for Human Rights, the American Watch Committee, and the Committee to Protect Journalists. It is not surprising that several American associations jumped on the case: after all, coming from a common law background, they hold a very distinct view on the law system and its powers.

The Colegio pointed out that compulsory licensing exists in the organic laws of all professional colegios, and that it assures adequate education, requires strict observance of the standards of professional ethics, oversees the correct exercise of the profession. The Costa Rican government argued that

> The practice of certain professions involves not only rights but also duties toward the community and the social order. That is what justifies the requirement of special qualifications, regulated by law, for the practice of some professions, such as journalism (World Press Freedom Committee, 1986, p. 24).

Compulsory licensing was defended by the Costa Rican government, the Colegio and the Inter-American Commission as a practice that has a social function--it respects the rights of the others and protects the public order, health, morals and national security while it guarantees ethics, competence, social betterment of journalists and independence from their employers (WPFC, loc. cit.).

The Court, however, did not agree with the arguments that justified

licensing as a means of guaranteeing respect for the rights or reputations of others or the protection of national security of public health or morals. Licensing cannot be included under the restrictions authorized in Article 13.

As the Court argued, the "concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole" (WPFC, op. cit. p.26).

The reasons of public order, that may justify compulsory licensing of other professions, cannot be invoked in the case of journalism, the Court pointed out--"it would be a contradiction to invoke a restriction to freedom of expression as a means of guaranteeing it" (p. 27).

Such rationale was the main support of the Court's decision. The Inter-American Court on Human Rights concluded:

> a law licensing journalists, which does not allow those who are not members of the "Colegio" to practice journalism and limits access to the "Colegio" to university graduates who have specialized in certain fields, is not compatible with the Convention. Such a law would contain restriction to freedom of expression that are not authorized by Article 13(2) of the Convention and would consequently be in violation (of) not only the right of each individual to seek and impart information and ideas through any means of his choice, but also the right of the public at large to receive information without any interference (p.30)

The Court declared, thus, that not only compulsory licensing of journalists, but also Law No. 4420 of Costa Rica are incompatible with Article 13 of the American Convention of Human Rights (4).

Inter-American Court on Human Rights: its function and power

The Inter-American Court on Human Rights "is an autonomous judicial institution whose purposes is the application and interpretation of the

American Convention of Human Rights" (OAS, p. 149). It was created through the American Convention and officially installed in San Jose, Costa Rica, on September 3, 1979. Ever since then, San Jose has been the seat of the Court.

Consisting of seven judges--nationals of the member states of the OAS with recognized competence in the field of human rights--the Court exercises both adjudicatory and advisory jurisdiction.

As stated in Articles 61, 62 and 63 of the Convention, only the Inter-American Commission and the States Parties to the Convention--the ones that have recognized the Court's jurisdiction as binding--are authorized to submit a case to be analyzed under the Court's adjudicatory jurisdiction.

For its advisory opinion, however, Article 64 provides that any member state of OAS may consult the Court on the interpretation of the Convention or other Human Rights treaties in the American States, or even on the compatibility between domestic laws and international human rights instruments (OAS, p. 16-17, 52-53).

According to Articles 67 and 68 of the American Convention, as it regards to the adjudicatory jurisdiction, "the judgment of the Court shall be final and not subject to appeal" and the States Parties to the Convention shall "undertake to comply with the judgment of the country in any case to which they are parties" (Brownlie, 1981, p. 412). In these cases, the Court's rulings are legally binding and enforceable.

Advisory opinions are, as the President of the Inter-American Court on Human Rights Justice Buergenthal explained, "by their nature nonbinding, which is not to say that they lack legal authority in clarifying the obligations that states may have assumed by ratifying a trea-

ty" (Dyer, in WPFC, 1986, p. 40).

In the Costa Rica case, there is only one way of enforcing the advisory opinion of the Court: it is through the invocation of the commitment that the member states make when they sign the declaration of recognition of the Court's jurisdiction.

According to Justice Buergenthal, the difficulty in enforcing the Court's ruling is related to the fact that, even though 19 member states in the Western hemisphere have ratified the American Convention, only eight (Argentina, Colombia, Costa Rica, Ecuador, Honduras, Peru, Uruguay and Venezuela) have recognized the Court's jurisdiction (IAPA Updater, Jan. 87).

The status of press freedom in the hemisphere after the court's ruling

When Justice Buergenthal read the verdict of the Schmidt case in November 1985, the press freedom community expressed its expectations that the Court's ruling will "have a wide effect on the proliferation of such government-approved press bodies, which have spread to 11 nations of Latin America since the first 'Colegio' was organized in Costa Rica" (Dyer, WPFC, p. 37).

Costa Rican authorities, however, did not seem very convinced or threatened by the Court's judicial power. The country's vice-minister of Foreign Relations, Gerardo Trejos, was quoted by the Tico Times in an angry response to the Court's decision:

> The decision is not binding on the government of Costa Rica. It's simply an opinion of the Court. Costa Rica is a sovereign state, and the constitutional organs of the state are the only ones which can make laws (WPFC, p. 36).

Another quote in the Tico Times suggested the government non-willingness to comply with the ruling. Costa Rican then-President

Luis Monge, who had previously agreed to request the Court's opinion in a very democratic attitude, declared himself not willing to accept the Court's decision if it went against the country's law: "if the Court agrees with our laws, fine; otherwise we'll guide ourselves by our own legislation" (The Tico Times, July 11, 1986).

The attitude of Costa Rican authorities may have have caused the press freedom community to tone down its expectations of major changes in the licensing systems in Costa Rica and other Latin American countries. The publisher of the Tico Times, Richard Dyer, declared to the Los Angeles Daily Journal, California, that he doubted the Court's ruling would cause any immediate change in Costa Rican laws...

> ...but I think it will be some time before the Collegium will sue another journalist for illegal practice. If they do, it is likely that the local courts will be influenced by the Human Rights Court decision and throw the case out (IAPA News, Feb. 86, p. 2).

The situation of press freedom in Costa Rica and in the other press-licensing countries in Latin America has not changed much since the Inter-American Court's decision. And if there is a change, it seems hard to define its pattern.

According to a July 1986 account of the Tico Times, since the Court handed down its advisory opinion, the Colegio "has twice applied restrictive measures to local and foreign journalists, denying access for non-Colegio registered journalists for coverage of the presidential election last February and the presidential inauguration ceremonies in May" (The Tico Times, July 11, 1986).

As reported in the IAPA News of October 1986, "A Tico Times reporter was barred from press conferences at the health ministry because she did not belong to the local journalist collegium" (p. 9).

The Colegio has also published a list of journalists it claims are legally entitled to practice journalism in the country. According to Southam News correspondent Dave Todd, the association has issued a general call to Costa Ricans to "deny interviews to 'illegal' journalists" (IAPA, June 86, p. 3)

According to Dyer, the Costa Rican Colegio de Periodistas not only "is tightening its grip" on authorizing who may cover news in the country but is also spreading its monopoly on all government news sources: the Colegio handed in a bill in the Legislative Assembly proposing reforms in its law so that the association can have control over information services of the state, periodical publications and the posts of editor, sub-editor, managing editor, editor and the like (IAPA News, April 86, p. 6).

The situation in the other 10 press-licensing Latin American countries does not differ much of that of Costa Rica. According to the 1986 report of the IAPA's Committee on Freedom of the Press and Information, obligatory licensing legislation in one form or another still exists in Bolivia, Brazil, Colombia, The Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Panama, Peru and Venezuela.

Despite the Court's decision, representatives of Colègio de Periodistas of Costa Rica, Ecuador, Honduras, Panama, Peru, The Dominican Republic, and Venezuela met in Caracas on November 1986 to form a committee of lawyers from each association aimed at legally defending obligatory licensing of journalists. The committee would act as an advisory body to the Federacion Latinoamericana de Periodistas (IAPA Updater, Jan. 87, p. 6).

In Panama, a 1978 law empowers the Executive Branch to fine, im-

prison, or suspend the license of journalists believed to be disseminating false information. Because of this law, in May 1986, Antonio Bernal, a Radio Mundial commentator, was suspended for life from broadcasting and fined US$ 2,500 for reporting that "Panamanial officials were involved in drug trafficking and that the wife of President Arturo del Valle was planning to convert the national library into her private office" (CPJ Update, Aug./Sept. 86, p. 8).

In Haiti, a new Press Law imposes obligatory licensing of journalists. Its Article 9 provides that a foreign journalist must solicit from the Ministry of Information and Coordination a card of accreditation upon the presentation of his press card in order to practice the profession in the country. Article 10 stipulates that only journalists holding the professional identity card will be recognized as professional journalists by the national administrative authorities (IAPA News, Oct. 86, p. 9).

In Peru, a law has been approved by the Chamber of Deputies requiring that "editors and press attaches and, in general, those performing the type of activity in the public sector, including autonomous public enterprises and municipalities, must be licensed professional journalists" (IAPA, 1986, p. 14).

It is important to note, however, that the recent movement toward democracy in Latin America has caused licensing of journalists to be challenged in some countries.

In the Dominican Republic, for instance, six newspapers of the Dominican Newspapers Society brought obligatory licensing to court on constitutional grounds. According to the Society, the creation of Journalists Collegium is unconstitutional for it violated the rights of

expression, the right of association as well as other civil rights. The case is still pending before the San Domingo Appeals Court, but, as reported by IAPA, newspapers belonging to the society "have refrained from adhering to the licensing requirements while the issue is under consideration by the Court" (1986, pp. 14).

In a less recent example, Chile, the first South American country to adopt government-sanctioned Colegio de Periodistas, repealed its compulsory licensing law in 1981.

Examples like these, however, are still outnumbered by the ones reporting support or maintenance of licensing in the hemisphere.

From the situation of press freedom in the Latin American countries with compulsory legislature, it is evident that the impact of the advisory opinion of the Inter-American Court on Human Rights is yet to be seen. Due to its non-binding nature, advisory jurisdiction, however, takes longer to be adopted than the adjudicatory jurisdiction.

As stated in the IAPA report of the Committee on Freedom of the Press and Information, the Inter-American Court's ruling "is only the beginning of the fight" (p. 2) and it seems significant enough that this fight started in Costa Rica for there is a tendency in Latin America toward the licensing of the press.

The opinion may not result in the immediate abolition of compulsory licensing of journalists laws, but it may gradually weaken their enforcement.

Press-licensing countries must be persuaded to adhere to the ruling of the Inter-American Court on Human Rights, and to repeal the laws making colegio membership compulsory. Nothing has been said against the existence of professional colegios as a way to promote the betterment of

the profession. What has upset the press freedom community is the compulsory nature of these associations' membership.

In combating compulsory licensing of journalists, IAPA has called upon "any journalist who has been denied the right to work for having failed to join a collegium or obtain a government license" to contact the association's headquarters. In addition, following the resolutions of its midyear meetings in Brazil (March 86) and in San Antonio (March 87), IAPA has called upon the legislatures and governments of signatory countries of the Inter-American Convention of Human Rights that still maintains such licensing systems either to repeal such laws or declare them invalid in light of the Court's decision.

Costa Rican lawyers, according to the Tico Times, have instructed visiting journalists to ignore the licensing law and refuse to register with the Colegio.

As an editorial in the February issue of the Los Angeles Times so well put it,

> In Latin America, especially, where so many countries are struggling their way back to democracy after a long period of oppressive military rule, governments must not be conceded additional tools that can be used to stifle a questioning or critical press.

The Schmidt case, for its pioneerism, spilled over the boarders of the American continent and gained international attention.

In Spain, the advisory opinion of the Inter-American Court has served as a support for the Spain's ombudsman Joaquim Ruiz-Gimenez to request the constitutional court to overturn a law by the regional parliament in Catalonia, which made it compulsory for journalists to be licensed (IPI Report, 1986, p. 6).

Licensing of journalists: protection under attack

The issue of compulsory licensing of journalists encompasses two basic questions: the protection of journalism as a practice that involves the rights of both the professional and the public, and the protection of journalists, a human being whose professional activity may involve hazardous duties.

Both presuppose a higher instance granting credentials to newsmen according to some kind of criterion--a licensing system. However, the rationale behind each of them set them apart.

The protection of journalism is the issue of discussions that hover around the legitimacy of compulsory colegios--one of which was brought before the Inter-American Court of Human Rights.

The protection of journalists, on the other hand, is the issue of the discussions raised by the UNESCO proposal for a "new world information order".

The protection defended by the Costa Rican Colegio de Periodistas in the Schmidt case entails a "noble concern" with the betterment of the profession and its social function.

The protection defended by UNESCO entails a humanitarian concern with the lives of journalists in dangerous professional missions.

A system of accreditation through compulsory membership to the professional association was the solution found by the colegios. Such organization claim to strengthen the defense of the rights and interests of their members, satisfy their material and moral necessities by uniting their forces, and guarantee the observance of professional ethics.

In the case of the proposal for the protection of journalists, Pierre Gaborit, professor of political science at the University of

Paris-Nord, has suggested in the 1981 UNESCO debate in Paris the adoption of an identification card to be issued and approved by the respective government upon the journalist's commitment to abide a code of professional ethics.

Given that, one may ask what is wrong with an organization that intends to elevate the professional standards of the journalism activity, or with a proposal for safeguarding the lives of journalists in risky assignments?

The press freedom advocates fear that the word "protection" only masks what would be otherwise called prior restraint--the proposals for protection usually implies a licensing system.

In May 1981, during the Voices of Freedom Conference in Talloires, France, journalists, reporters, editors, photographers, publishers and broadcasters from many parts of the world rejected the imposition of licensing of journalists and "all other proposals that would control them in name of protecting them." As stated in what is known as the Declaration of Talloires,

> Members of the press should enjoy the full protection of national and international law. We seek no special protection or any special status...
> Licensing of journalists by national or international bodies should not be sanctioned, nor should special requirements be demanded of journalists in lieu of licensing them. Such measures submit journalists to controls and pressures inconsistent with a free press (In World Press Freedom Committee, 1982, p. 146).

Leonard H. Marks argued before the Inter-American Court that "A licensed journalist is not free," once the license becomes a privilege that can be withdrawn.

The problem here is that both systems of protection presuppose the assignment to a public authority of the paternalistic task of setting

the standards for the practice of the profession and stipulating who would be entitled this "protection."

In such a system, the right to define who is, and who no longer is, a journalist is in the hands of the government or of a government-sanctioned organization. It is needless to list the disadvantages of not having a separation between the press and the state.

According to McColm, the Organic Law of the Colegio defined journalists "in terms of their socioeconomic position in the business of journalism and not according to the performance of any concrete activities that one could probably call journalism" (McColm, 1986, p. 19). During the trial, Colegio's attorneys described a journalistic act as the act of taking notes at a press conference--regardless of what one did with those notes, and of interviewing a public figure.

The International Federation of Journalists and the International Organization of Journalists adopted at a 1980 UNESCO meeting the following definition of a journalist:

> any person, irrespective of nationality, who is engaged in regular paid employment as an editor, reporter, photographer, cameraman of technician of the press, radio, television or filmed news services, exercising his or her profession in compliance with the ethical principles and customs laid down by the profession itself, such professional activity consisting of seeking, receiving or imparting information, opinions, ideas, studies of comments fro daily or periodic publications, press agencies, radio or television broadcasting services or filmed news services (IOJ, Dec. 85, p. 5)

Because of the existing different political systems in the world, every effort in UNESCO or elsewhere to establish and codify an universal standard for the journalistic activity into law--even under the guise of protecting the journalism as a practice or the lives of journalists--would be doomed to fail.

The Colegio and the UNESCO's International Commission of the Study

of Communication Problems (the McBride Commission) argue that "such laws protect society by requiring the journalist to accept certain duties and responsibilities, including refraining from divulging false of unconfirmed information, upholding the dignity of the profession, and acting in a socially responsible way" (Sussman, in Freedom House, p. 9).

To guarantee the responsible exercise of journalism and protect the public against abuses of information, democratic societies, where human rights are respected, have developed libel, copyright and labor laws.

If the argument is to safeguard the lives of journalists, there have been several suggestions on "how to protect yourself" in hazardous duties. The reflexive pronoun here is the key. According to Bullen, "Not you, not me, not the Red Cross (5), not UNESCO, not any government, not anybody else should try to make decisions for journalists, or try to tell them that they must do this or that if they want 'protection'" (1986, p. 8).

As he pointed out, in the majority of the cases, journalists get killed of hurt because they go to dangerous places--or because somebody decides to kill or hurt them:

> a card in a reporter's pocket will not save him from a sniper or a mob or a bomb or a fast-moving car. An emblem on a journalist's arm may draw bullets just as easily as not. Newsmen who are expelled or jailed are not expelled or jailed because nobody knows they are reporters. They are expelled and jailed because they are reporters (p. 2).

Regardless the excuse for adopting them, "protection" systems for journalism and journalists entail a compulsory licensing system which constitutes a prior restraint once it not only prevents persons from exercising their right to freedom of expression, but it also deters others from ever attempting to function as a journalist, and it limits the right of all other to receive information and ideas.

Unquestionably, the press does have significant social responsibilities, but it is only through the guarantee of a free flow of ideas, opinions and information, and guarantee of free access to information that it can fully inform the public and accomplish its social function.

NOTES

(1) The signatory countries of the American Convention of Human Rights are: Argentina,Barbados, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

(2) A long-time tradition in Spanish press law, accreditation has been used as a system in which professional journalists must be enrolled in the Registry of Professional Journalists. As of an agreement (in force until new press law is approved) reached in 1980 between the Anson's Federation of Press Association and the three unions which had media-related members, eligibility to the Registry come upon membership in one of the nation's professional associations, which are organizations open only to the ones who had been working prior to the provisory agreement or to graduates of a recognized school of journalism (Faculdad de Ciencias de la Informacion, Seccion Periodismo). Press cards are issued by the Federation of Press Associations and the individual association involved (Kurian, 1982, p. 813).

(3) See Lowe v. SEC, 105 S. Ct. 2557 (1985) (White, concurring) at 2586 for the protection of "investment advisor" and publication of nonpersonal investment advice.

(4) Some have also argued that Law 4420 of Costa Rica violates not only Article 13 of the American Convention of Human Rights but also Article 16 that guarantees the right to association. Judge Rafael Nieto Navia argues that Article 16 guarantees both a right and a freedom--the right to form associations and the freedom under which no one can be compelled or obligated to join an association. Such freedom is also guaranteed by Article 20 of the Universal Declaration of Human Rights. As stated in Articles 4 of Law 4420, "all journalists are entitled to resign from the Association, either on a temporary or a permanent basis", but according to Article 22, "the function of a journalist can only be carried out by duly registered members of the Association". This compulsory nature of the Colegio is what, in Judge Navia's opinion, violates the freedom to participate in an association.

In adition, there is also claims that such law expresses a prejudice against foreigners. According to an editorial of The Tico Times, "this law has been used throughout the years to threaten and harass members of the foreign press in Costa Rica" (1983, p. 2). According to the publisher of the paper, Law 4420 makes no provision for English-language newspapers, which makes it impossible for such papers to comply with the law. Prior to the Schmidt case, the same alleged crime had caused another foreign newsman to suspend publication of his paper, The San Jose News. Joe Phillips, an American with a journalism degree from the University of Texas was sued by the Colegio and given a suspended sentence in 1978, and later convicted in 1979.

(4) The Red Cross is here mentioned by Bullen because its International Committee has presented a project called "Hot Line" at a Round Table

meeting held in April 1985 at Mont-Pelerin, Switzerland, in which the Red Cross would offer protection and assistance to journalists who are missing, captured, arrested, imprisoned of detained.

REFERENCES

Blaustein, Albert P. and Flanz, Gisbert H., ed. (1987) Constitutions of the Countries of the World. New York: Oceana Publications, Inc..

Brownlie, Ian, ed. (1981) Basic Documents on Human Rights. New York: Oxford University Press.

Bullen, Dana. (1985) "Remarks by Dana Bullen, Executive Director, World Press Freedom Committee, for International Community of the Red Cross round table, Vevey, Switzerland, April 23-24.

_____. (1987) Telephone interview. March 20.

The Christian Science Monitor. (1985) "Press Freedom in Latin America". November 1, p. 15.

Cony, Edward R. (1985) "Government-Issued IDs Won't Save Journalists' Lives". Wall Street Journal. July 25.

CPJ Update. August/September 1986.

Dyer, Deny. (1986) "More Meddling by the 'Colegio'". The Tico Times. May 9, p. 2.

Dyer, Richard. (1986) "Further Press Control Sought". The Tico Times. April 4, pp. 1, 4.

_____. (1986) "A Tale of Two Treaties". The Tico Times. July 11, p. 2.

_____. (1986) "Court Finds Licensing a Violation". In World Press Freedom Committee, Licensing of Journalists Violates Human Rights. Washington: WPFC.

Editor & Publisher. (1983) "Costa Rica Puts Unlicensed U.S. Reporter On Trial". January 15, p. 7.

_____. (1983) "Court Denies Professional Status to Writer". August 27, p. 8.

_____. (1986) "Assalts on Worldwide Press Freedom Were More Subtle in '86: International Press Institute Issues Its Anual Report". February 14, pp. 14, 21, 48-55, 61.

The Europa Year Book 1986- A World Survey. (1986) London: Europa Publication s Limited.

Fonseca, Jaime M. (1977) Communication Policies in Costa Rica. Paris: UNESCO.

Freedom House. (1986) To License a Journalist? A Landmark Decision in the Schmidt Case. New York: Freedom House.

Gardner, Mary. (1967) The Inter-American Press Association: Its Fight for Freedom of the Press, 1926-1960. Austin, Texas: Institute of Latin American Studies.

_____. (1985) "Colegiacion: Another Way to Control the Press?". In Soderlund, Walter C. and Surlin, Stuart H., ed. Media in Latin America and the Carabbean: Domestic and International Perspectives. Ontario: Cooperative Program in Latin American and the Carabbean Studies.

Garrison, Bruce and Munoz, Julio E. (1986) "Commentary: The Free and Not-So-Free Press of Latin America and the Carabbean (Report No. 3)". Newspaper Research Journal. Vol. 7, No. 4, Summer.

Harris, Robert E. G. (1964) A Report From Spain - The Press In an Authoritarian State. Los Angeles: Department of Journalism, University of California.

IAPA. (1985) "Report on the Committee of Freedom of the Press and Information" Inter-American Press Association XLI General Assembly, Cartagena, Colombia, October.

IAPA News. Dec. 85, Feb. 86, April 86, Oct. 86.

IAPA Updater. Jan. 87.

IFJ. (1986) "Licensing of Journalists and the Colegios". Document prepared for the 18th World Congress of the International Federation of Journalists, Elsinore, Denmark, June 2-6.

International Committee of the Red Cross. (1985) "Possibilities and Limitations of ICRC Action on Behalf of Journalists on dangerous professional missions - "Hot Line"." A brochure prublished in Geneva.

IOJ. (1985) "IOJ Position on Protection of Journalists". Document prepared for the International Committee of the Red Cross round table, Vevey, Switzerland, April 23-24.

IPI Report. "IPI Moves to Outlaw Licensing". April, p. 5.Luard, Evan, ed. (1967) The International Protection of Human Rights. New York: Frederick A. Praeger.

Kurian, George Thomas, ed. (1982) World Press Encyclopedia. New York: Facts of File.

Lahav, Pnina, ed. (1985) Press Law in Modern Democracies: A Comparative Study. New York: Longman Inc.

Marks, Leonard H.; Schmidt, Jr., Richard M.; Pelesh, Mark L. (1985) "Brief of World Press Freedom Committee, International Press Institute, The Newspaper Guild, and the International Associationa of Broadcasting." Washington: WPFC.

McColm, Bruce R. (1986) "Brief of Bruce R. McColm to the Inter-American Commission of Human Rights and to the Inter-American Court on Human Rights". In WPFC, To License a Journalist? A Landmark Decision in the Schmidt Case. New York: Freedom House.

Nordenstreng, Kaarle. (1984) The Mass Media Declaration of UNESCO. Norwood, New Jersey: Ablex Publishing Corporation.

"Obligatory Licensing: A Threat to Press Freedom -- The Stephen Schmidt Case. A publication of The Tico Times.

Organization of American States. (1983) Handbook of Exsisting Rules Pertaining to Human Rights in the Inter-American System. Washington: Iachr Court.

Paz, Raimundo Garcia. (1986) "Licensing of Journalists." Document prepared for the 18th World Congress of the International Federation of Journalists, Elsinore, Denmark, June 2-6.

Pike, Fredrick B. (1971) Hispanismo, 1898-1936: Spanish Conservative Liberals and Their Relation With Spanish America. London: University of Notre Dame Press.

Radolf, Andrew. (1984) "Is UNESCO Misunderstood?". Editor & Publisher. April 21, pp.7, 15-16.

Schulte, Henry F. (1968) The Spanish Press 1470-1966: Print, Power, and Politics. Chicago: University of Illinois Press.

Smith, James Morton. (1966) Freedom's Fetters: The Allien and Sedictions Laws and American Civil Liberties. New York: Cornell University Press.

Sussman, Leonard R. (1981) "Third World News and Foreign Relations". Nieman Reports. Vol XXXV, No. 2, Summer.

_____. (1986) "Press Dangers, Press Failures". Freedom at Issue. Jan.-Feb., pp. 42-46.

The Tico Times. "Lawyers: Press Should Ignore Licensing Law". July 11.

_____. (1983) "The Crime of Newswriting". June 10.

UNESCO (1982) The Protection of Journalists. New York: UNIPUB.